IN THE HIGH COURT OF JUDICATURE AT BOBBY
ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO.1272 OF 2006

Narayan Phenany & Anr.....Petitioners

Vs.

Prakash Walke & Ors...Respondents

Mr. Susheel Mahadeshwar with Mrs. Ranjana Todankar, for the Petitioner
Mr. K.K. Singhvi, Senior Counsel with Mr. J.P. Cama, Senior Counsel and Mr. M.D.Nagle, for respondent No.1.
Mr. S.Z. Choudhary, for respondent No.1.

CORAM: F.I. REBELLO &
ANOOP V. MOHTA, JJ.
DATE : 28th April,2006

P.C.:

. Heard forthwith.

. The petitioners were aggrieved by the order of the Industrial Court dated 15th April, 2006. By that order the Industrial Court has rejected the objection raised by the petitioners herein to the report submitted by the election commissioner and has further directed the opponents therein who are the petitioners herein to hand over charge of the office and property, etc., to the elected panel with immediate effect. By subsequent order of the same day the petitioners were directed not to deal with the property of the Union without permission of the Court.

2. From the pleadings and the material on record it appears that on a certificate the matter was referred to the Industrial Court under Section

28A of the Trade Unions Act. We may gainfully refer to sub-section (1), (2) and (3) of Section 28(1A) of the Trade Unions Act, which read as under:-

> "28(1A). **Power of Industrial Court to decide certain disputes.**-- (1) When there is a dispute as respects whether or not any person is an office-bearer or member of a registered Trade Union (including any dispute relating to a wrongful expulsion of any such office-bearer or member), or where there is any dispute relating to the property (including the account books) of any registered Trade Union, any member of such registered Trade Union for a period of not less than six months may, with the consent of the Registrar, and in such manner as may be prescribed, refer the dispute to the Industrial Court constituted under the Bombay Industrial Relations Act, 1946, for decision.
>
> (2) The Industrial Court shall, after hearing the parties to the dispute decide the dispute; and may require an office-bearer or member of the registered Trade Union, to be appointed whether by election or otherwise under the supervision of such person as the Industrial Court may

> appoint in this behalf or removed, in accordance with the rules of the Trade Union:
>
> Provided that, the industrial Court may, pending the decision of the dispute, make an interim order specifying or appointing any person or appointing a committee of Administration for any purpose under the Act including the purpose of taking possession or control of the property in dispute and managing it for the purposes of the Union pending the decision.
>
> (3) the decision of the Industrial Court shall be final and binding on the parties, and shall not be called in question in any civil Court."

When the matter was before the Industrial Court the parties voluntarily agreed that fresh elections be held. Pursuant to that Industrial Court appointed a Commission to conduct the elections. The elections were held and the report was submitted to the Industrial Court. At this juncture the petitioners contended that it was beyond the jurisdiction of the Court to accept results of the elections conducted by the election commission appointed by the Industrial Court. Those objections have been

rejected and consequently the present petition.

3. At the hearing of this petition, on behalf of the petitioners their learned Counsel contends that considering the scheme of Section 28(1A) of the Trade Unions Act it was not within the jurisdiction of the Industrial Court to have decided the dispute before it by directing holding of the elections and by appointing Commissioner and fixing exorbitant fees for the Commissioner. It is pointed out that when the reference comes before the Industrial Court under Section 28(1A) of the Act it has to decide that reference by the procedure contemplated therein. Reference is made to the judgment of the Apex Court in the case of **Automobile Products of India Employees' Union vs. Association of Engineering Workers, Bombay & Ors., 1990 2 C.L.R. 344.** Our attention is invited to para.21 of the judgment which reads as under:-

> "21. The consent of the parties to follow a procedure which is against the mandatory provisions of the Act, cannot cure the illegality. For reasons which we have indicated earlier the legislature did not opt for the ballot as a method for determining the representative character of the union and laid down an elaborate procedure with necessary safeguards, to do

> so. In the circumstances, to permit the parties by consent to substitute a procedure of their own is in effect to permit them to substitute the provisions of the Act."

. A perusal of the said judgment would indicate that the matter before the Apex Court was under the provisions of the M.R.T.U. & P.U.L.P. Act, which has provisions for recognition and de-recognition of Unions. It is not the majority on the date when the elections are held which decides whether the Union can be recognised or de-recognised. But what is material is the date of the application and the membership six months previous to the date of the application. It is in that context that the Apex Court was pleased to observe that it was not open to conduct elections and recognition has to be in the manner set out under the Act. We are clearly of the opinion that the aforesaid judgment is of no assistance to decide the controversy under Section 28(1A) of the Trade Unions Act.

4. The only limited question is whether it was open to the Industrial Court on consent of the parties to issue directions to hold elections. We see nothing in the language of Section 28(1A) which prevents holding of elections, if parties voluntarily seek to forego the earlier status and

decide in the democratic manner to exercise their franchise to decide as to amongst them has the support of majority of their members. This exercise could have been done by the parties voluntarily outside the Court. If this could have been done outside the Court it was open for them to have agreed before the Court to bring transparency and fairness in the procedure of conducting the elections Section 28(1A)(2) supports this view. Therefore, when the parties agreed by consent, what they have agreed is that the elections be conducted under the supervision of an authority who would be fair and impartial. We have, therefore, no hesitation in holding that it was open to the Industrial Court on the agreement of the parties to direct holding of the elections.

5. The next limited question is whether thereafter there was power to issue directions as set out in the impugned order. We have no difficulty in tracing such a power in Section 28(1A) of the Trade Unions Act. Once that be the case the order is within jurisdiction. We find, therefore, no case for interference. Petition rejected.

6. Learned Counsel for the petitioners prays for status quo. We are not inclined to grant the order of status quo as the members have elected and decided as to who should represent them. Hence oral

application for status quo is rejected.

(F.I.REBELLO, J.)

(ANOOP V. MOHTA, J)